In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 8327 of 2006

Date of Decision: 07.12.2006

Rajesh Kumar and others

…Petitioners

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Namit Kumar, Advocate,
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J. (Oral)

The prayer made by the petitioners in this petition filed under Article 226 of the Constitution is for issuance for direction to respondents to grant them the pay scale of Rs. 1200-2040 w.e.f. 2.5.1991 instead of 950-1500 on the strength of the qualification prescribed for the post of Radio-Technician as per the Government instructions, dated 23.8.1990 as modified vide Government

instructions dated 26.7.1991 (P-8). The aforementioned pay scale has been further revised to Rs. 4000-6000 w.e.f. 1.1.1996.

A reference to brief facts would be necessary. The petitioners were selected and appointed as Constable Wireless Operators on 28.9.1989. An Aptitude Technician Test was held on 28.4.1991 for those willing and I.T.I. qualified Constable (Electronic, Radio and T.V., Electrical/Diploma holder of Polytechnic, Ex-servicemen in Radio Mechanics). The petitioners appeared and qualified that Aptitude Radio Technician Test. They were converted from Radio Operators to Radio Technicians vide order dated 2.5.1991 (P-5). Thereafter, the petitioners were deputed for System Mechanical Grade III Course (SMG-III) at Police Wireless Training Centre, Jind, which they qualified on 3.3.1996. They also qualified Police Wireless Technician Grade II Course (PWT-II) on 23.11.2001. The petitioners except petitioner No. 4 were promoted as Head Constable in 2004. The State Government has revised the pay scale of all technical posts in various departments for which minimum qualification prescribed is Matric with ITI/Polytechnic Certificate w.e.f. 1.5.1990. A notification dated 23.8.1990 and modified notification dated 26.7.1991 (P-8) were issued. The benefits of these notifications was not extended to Police Department. Learned counsel for the petitioners has argued that the matter is covered by two Division Bench judgments of this Court Annexures P-9 and P-10, which has extended the benefits to Police Department as well.

Learned State counsel has made an ambitious attempt to argue that the matter is not covered by the Division Bench judgments in P-9 and P-10.

Having heard the learned counsel we find that the controversy raised in the instant petition has earlier been considered by a Division Bench of this Court in the case of Sandeep Mehta and others v. State of Haryana and another (C.W.P. No. 15535 of 1999, decided on 12.9.2002, Annexure P-10), which has been decided in favour of the petitioners. The operative part of the aforementioned judgment reads as under:-

> " We have given our thoughtful consideration to the entire matter and find that the plea raised by the petitioners being meritorious deserves to succeed. In fact from a perusal of the order Annexure P-2, we find absolutely no reason to create any distinction or differentiation between the posts in various other departments vis-à-vis the posts in the police department. We find that the instructions Annexure P-2 are of universal application. No distinction whatsoever on the basis of the service in a particular department could be made by the State Government. The aforesaid general order was applicable as well to the police department as well to any other department of the State Government.
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> Almost in an identical circumstances in the case of Mukesh Kumar v. State of Haryana and others

(CWP No. 2579 of 1997) decided on August 12, 2002, we had taken a similar view.

Thus while allowing the present writ petition and quashing the orders annexure P-5, we hold that the petitioners are entitled to the pay scales of Rs. 1200-2040 with effect from May 1, 1990. However, the petitioners would be entitled to get the arrears of their pay only for a period of 38 months preceding the date of the decision of their C.W.P. No. 351 of 1999 i.e. 38 months prior to January 13, 1999.

The arrears shall be paid to the petitioners within a period of six months from the date of certified copy of this order is received by the respondents."

It is appropriate to mention that against the aforementioned decision of this Court, dated 12.9.2002 (P-10) the respondent State of Haryana preferred a Special Leave Petition (Civil) No. 6402 of 2003 (State of Haryana and another v. Sandeep Mehta and others), however, the same has been dismissed by Hon'ble the Supreme Court vide order dated 18.2.2005 (P-11). It has further been clarified that the benefit of pay scale given to the petitioners in the aforementioned case is to be effective from the dates of their appointment on the basis of their technical qualification, if it is later than 23.8.1990, the date of the notification, which has been considered and applied in Sandeep Mehta's case (supra).

For the reasons stated above, the instant petition is allowed in terms of the Division Bench judgment of this Court in the case of Sandeep Mehta and others v. State of Haryana and another (C.W.P. No. 15535 of 1999, decided on 12.9.2002) as well as in view of the clarification of Hon'ble the Supreme Court, vide order dated 18.2.2005 (Annexures P-10 & P-11 respectively). Accordingly, the petitioners shall be entitled to fixation of their pay in the pay scale of Rs. 1200-2040 w.e.f. 2.5.1991 and Rs. 4000-6000 w.e.f. 1.1.1996 when their posts were converted from Wireless Operator to Wireless Technician on the basis of their technical qualification of Matric with ITI Certificate after having qualified the Aptitude Radio Technician Test. The arrears shall be restricted to the period of three years two months preceding the date of filing the petition which was filed on 1.5.2006. The writ petition stands disposed of in the above terms. The respondents are directed to calculate and disburse the arrears to the petitioners within a period of six months from the date of receipt of certified copy of this order.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)

December 7, 2006
JUDGE

Pkapoor